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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CECIL PHILLIP REYES,

Defendant and Appellant.

E071488

(Super.Ct.No. FWV1003160)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed.

Cecil Phillip Reyes, in pro. per.; Dawn S. Mortazavi, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On March 16, 2011, defendant and appellant Cecil Phillip Reyes was charged by information with attempted murder (Pen. Code¹, §§ 664,187, subd. (a), count 1), two counts of first degree residential burglary (§ 211, counts 2 & 3), elder or dependent adult abuse (§ 368, subd. (b)(1), count 4), and kidnapping to commit another crime (§ 209, subd. (b)(1), count 5). On April 17, 2012, a trial court granted defendant's motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806 and granted him in propria persona status. On motion by the People, the information was later amended by interlineation to change count 5 to kidnapping. (§ 207, subd. (a).) Pursuant to a plea agreement, defendant pled guilty to counts 1, 2, 4, and 5, in exchange for a 12-year state prison term and the dismissal of count 3. The sentence consisted of nine years on count 1, a consecutive one-third the midterm of four years on count 2 (16 months), a consecutive one-third the midterm of five years on count 5 (20 months), and a concurrent three years on count 4. Prior to taking the plea, the court thoroughly reviewed the terms of the agreement with defendant and reminded him that the People chose not to allege premeditation on the attempted murder charge, which would have made the punishment a life sentence. The parties stipulated that the preliminary hearing transcript provided a factual basis for the plea.

Defendant subsequently filed a motion to withdraw his plea, pursuant to section 1018, seeking to renegotiate his term to seven to eight years in state prison, rather than 12 years. In support of his motion, he asserted that he was not represented by counsel when

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

he pled guilty. The court found no good cause, stating that defendant insisted on representing himself, and he negotiated a 12-year sentence; it thus denied the motion. Then, in accordance with the plea agreement, the court sentenced defendant to 12 years in state prison and dismissed count 3.

Over five years later, defendant filed an in propria persona motion for sentence modification under section 664, claiming that his sentence on count 1 should be reduced by half since it was only an attempt, and that the court should apply section 654 to his sentence. The court denied the motion, concluding that the sentencing court imposed a legal sentence based on the plea agreement.

Defendant filed a timely notice of appeal from the denial of his modification motion. We affirm the judgment.

PROCEDURAL BACKGROUND

Defendant was charged with, and pled guilty to, attempted murder (§§ 664, 187, subd. (a), count 1), first degree residential burglary (§ 211, count 2), elder or dependent adult abuse (§ 368, subd. (b)(1), count 4), and kidnapping (§ 207, subd. (a), count 5).

ANALYSIS

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and potential arguable issues: (1) whether defendant's sentence for attempted murder was unauthorized; (2) whether his sentence was lawful under section 654; and

(3) whether his sentence was lawful under section 1170.1. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. He makes two arguments with the same conclusion—that his sentence should be reduced by three years. His first contention is that his acts of attempted murder, burglary, elder abuse, and kidnapping were committed pursuant to a single intent and objective; thus, his sentences on counts 2, 4, and 5 should be stayed under section 654. His second contention is somewhat confusing, but he appears to be arguing that his convictions on counts 2, 4, and 5 were barred by the double jeopardy clause of the Fifth Amendment, which prohibits the imposition of multiple punishments for the same offense. He claims that since he is being punished more than once for the same offense, his sentence should be reduced by three years.

“[A] challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself. Therefore, it was incumbent upon defendant to seek and obtain a probable cause certificate in order to attack the sentence on appeal.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 79; see § 1237.5.) Although defendant does not purport to challenge the validity of his plea, he is seeking the appeal of his sentence, which he agreed to as part of the negotiated plea bargain. Under these circumstances, the requirements of section 1237.5 apply. (*Pannizon*, at p. 79.) Defendant did not seek and obtain a certificate of probable cause.

Furthermore, defendant’s contention regarding section 654 is barred since he agreed to a specified sentence and did not assert a section 654 claim at the time of the

plea agreement. (*People v. Jones* (2013) 217 Cal.App.4th 735, 743-746; Cal. Rules of Court, rule 4.412(b).)

We also note that the double jeopardy clause of the federal constitution does not apply here. It provides that “a person may not be twice placed ‘in jeopardy’ for the ‘same offense.’ ‘The double jeopardy bar protects against a second prosecution for the same offense following an acquittal or conviction, and also protects against multiple punishment for the same offense.’ ” (*People v. Anderson* (2009) 47 Cal.4th 92, 103-104.) Here, defendant pled guilty to four different offenses.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.